

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Lily Carayannis	Team: Squad #12	CCRB Case #: 201700742	<input checked="" type="checkbox"/> Force <input type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input type="checkbox"/> Injury
Incident Date(s) Saturday, 01/21/2017 12:00 AM, Sunday, 01/22/2017 3:00 AM	Location of Incident: Belt Parkway at Brookville Boulevard	18 Mo. SOL 7/22/2018	Precinct: 105
Date/Time CV Reported Fri, 01/27/2017 11:08 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 01/27/2017 11:08 PM

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Rachid Benlhousain	21282	945504	HWY 03
2. POM Michael Fitzgibbon	09097	943240	HWY 03

Officer(s)	Allegation	Investigator Recommendation
A.POM Rachid Benlhousain	Abuse: Police Officer Rachid Benlhousain drew his gun.	
B.POM Rachid Benlhousain	Force: Police Officer Rachid Benlhousain pointed his gun at § 87(2)(b)	
C.POM Michael Fitzgibbon	Abuse: Police Officer Michael Fitzgibbon frisked § 87(2)(b)	
D.POM Michael Fitzgibbon	Abuse: Police Officer Michael Fitzgibbon searched § 87(2)(b)	
E.POM Rachid Benlhousain	Abuse: Police Officer Rachid Benlhousain seized § 87(2)(b)s property.	
§ 87(4-b) § 87(2)(g)		

Case Summary

On January 27, 2017, § 87(2)(b) filed the following complaint over the CCRB's Call Processing System.

On January 21, 2017, at approximately 3:10 a.m., § 87(2)(b) was driving his Scion FR-S (2015) on the Belt Parkway in Queens with his date, § 87(2)(b) who was in the passenger seat. PO Rachid Benlhousain and PO Michael Fitzgibbon, both from Highway 3, pulled him over. PO Benlhousain approached § 87(2)(b)'s vehicle with his firearm drawn (**Allegation A**) and allegedly pointed (**Allegation B**), and § 87(2)(b) was removed from the vehicle. PO Fitzgibbon frisked and searched § 87(2)(b)'s pockets (**Allegation C and D**) and § 87(2)(b) was handcuffed. PO Benlhousain had § 87(2)(b)'s vehicle towed (**Allegation E**). § 87(2)(b) received three VTL summonses, two for unsafe lane change and one for speeding 115mph in a 50mph. When the officer left, the tow truck driver allowed § 87(2)(b) to pay him so as to not have the vehicle towed to the impound lot. § 87(2)(b) paid the tow truck driver and left.

Attempts were made to speak with the tow truck driver, but the company stated that he no longer works for the company. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

On February 21, 2017, this case was reassigned from Investigator Chelsea Yogerst to Investigator Tessa Yesselman. On April 27, 2017, this case was reassigned from Investigator Yesselman to Manager Lily Carayannis.

This case is older than 90 days due to its reassignments, locating and obtaining information from the towing company, waiting for the command to provide a copy of the video evidence, and identifying PO Fitzgibbon.

This case has dash camera footage from the officers' vehicle (Board Review 13, see below for embedded video).

VIDEO 1



201700742_20170609_0811_DM.mp4

VIDEO 2



201700742_20170609_0815_DM.mp4

Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of May 18, 2017, § 87(2)(b) has not filed a Notice of Claim (Board Review 05).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b)

Civilian and Officer CCRB History

- This is the first complaint to which § 87(2)(b) has been a party (Board Review 06).
- PO Benlhousain has been a member of service for nine years and has had four cases with four allegations pled against him, none of which were fully investigated. § 87(2)(g)
- PO Fitzgibbon has been a member of the service for 10 years and has had 10 complaints and 29 allegations pled against him, none of which were substantiated. § 87(2)(g)

Findings and Recommendations

Allegations not pleaded

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation A—Abuse of Authority: Police Officer Rachid Benlhousain drew his gun.

It is undisputed that, once § 87(2)(b) was pulled over, PO Benlhousain drew his gun as he approached § 87(2)(b)'s door. It is further undisputed that § 87(2)(b) was speeding, though the amount of speeding is in dispute. It is further undisputed that § 87(2)(b) was calm and compliant during the stop, and that he turned off his vehicle and placed his hands out of the driver side window when commanded to do so. The video evidence also depicts as much.

PO Benlhousain (Board Review 03) stated that he drew his weapon because he was afraid for his safety as he approached the vehicle because he observed the vehicle speeding, switching lanes unsafely, and because he did not know how many occupants were in the vehicle.

PO Fitzgibbon (Board Review 04) stated that he did not know, at the time, that PO Benlhousain drew his firearm. PO Fitzgibbon only suspected § 87(2)(b) of reckless driving. PO Fitzgibbon was able to see inside the vehicle and he did not see the occupants moving about the vehicle.

People v. Gliner (Sept 2000) (Board Review 08) An officer was justified in pointing his gun at a motorist who fled the location in his vehicle while the officer was issuing a summons. For officer to justifiably draw and/or point (the cases do not make a distinction between these actions) his firearm, he must be able to articulate a reasonable fear for his safety or the safety of others and the objective standard of this fear is that the officer took actions that another officer who was “reasonably prudent” would have done.

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation B—Force: Police Officer Rachid Benlhousain pointed his gun at § 87(2)(b)
§ 87(2)(b) (Board Review 01) stated that PO Benlhousain also pointed his firearm at him. PO Benlhousain stated that he pointed his firearm at the driver’s side door. § 87(2)(b) denied that PO Benlhousain ever pointed his firearm at § 87(2)(b) and the video evidence depicts PO Benlhousain pointing his firearm to the ground. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation C—Abuse of Authority: Police Officer Michael Fitzgibbon frisked § 87(2)(b)

§ 87(2)(b)

Allegation D—Abuse of Authority: Police Officer Michael Fitzgibbon searched § 87(2)(b)

It is undisputed that § 87(2)(b) was speeding, though the extent of his speeding is in question. It is undisputed that § 87(2)(b) was given three summonses for VTL violations and that he was not arrested. It is undisputed that § 87(2)(b) was calm and compliant with the officers’ commands throughout the incident.

§ 87(2)(b) (Board Review 01) alleged that after he was removed from the vehicle, PO Fitzgibbon frisked and searched his pockets.

§ 87(2)(b) (Board Review 02) stated that PO Fitzgibbon frisked § 87(2)(b)’s entire body, but she could not see if he searched § 87(2)(b)’s pockets.

PO Fitzgibbon (Board Review 04) stated that he was new to the Highway command and was working with PO Benlhousain to learn the nuances of the command. PO Fitzgibbon observed § 87(2)(b) speeding and changing lanes without signaling. PO Fitzgibbon believed that § 87(2)(b) was going to be placed under arrest for reckless driving, but he also stated that it was not his arrest as PO Benlhousain was holding the speed monitoring device and because PO Fitzgibbon was still learning the nuances of the command. PO Fitzgibbon and PO Benlhousain did not have any conversation as to whether § 87(2)(b) was under arrest and PO Fitzgibbon first learned that PO Benlhousain was not going to arrest § 87(2)(b) when he observed him give § 87(2)(b) the three summonses. PO Fitzgibbon acknowledged that he frisked and searched § 87(2)(b) and he did this solely as he believed § 87(2)(b) was under arrest.

PO Benlhousain (Board Review 03) stated that he did not consider § 87(2)(b) under arrest and that he had still not decided if he was going to arrest him. He stated that he thought it was possible he could have a weapon because of the way he was driving, but he did not provide any additional observations that made him believe that § 87(2)(b) could have a weapon. PO Benlhousain believed that he (PO Benlhousain) may have reached into § 87(2)(b)’s pockets to find his ID, but he retracted that when he viewed the video depicting PO Fitzgibbon search his pockets.

The video evidence shows that § 87(2)(b) was compliant with the officers requests, that PO Fitzgibbon handcuffed him, and that PO Fitzgibbon searched him. § 87(2)(b)’s body blocks the view of the camera and it cannot be seen whether PO Fitzgibbon frisked his pockets.

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(g)

People v. DeBour, 40 N.Y.2d 210, 352 (Board Review 09) states that an officer can legally frisk a person if they have reasonable suspicion that the person possesses a weapon.

Patrol Guide Procedure 208-05 (Board Review 10) Outlines the general procedure for searching an individual who is under arrest. It states that, when arresting an individual, officers are to perform a limited frisk and search of an individual's clothing to discover contraband, weapons, and evidence.

§ 87(2)(g)

Allegation E—Abuse of Authority: Police Officer Rachid Benlhousain seized § 87(2)(b) s property.

It is undisputed that § 87(2)(b) was written summonses solely for the VTL violations of speeding, an unsafe lane change, and failing to signal. It is undisputed that PO Benlhousain called for a tow truck to tow § 87(2)(b) s vehicle from the location to an impound lot.

§ 87(2)(b) (Board Review 01) stated that after the officers left, the tow truck driver offered to leave his vehicle with him without taking it to the impound lot for a fee. § 87(2)(b) paid the fee and received his vehicle back. § 87(2)(b) provided the investigation with a copy of his receipt. Neither officer was aware of this fact during their CCRB interview.

PO Benlhousain (Board Review 03) stated that he had the vehicle towed because it is standard procedure to tow a vehicle to a lot when a civilian is driving recklessly.

PO Fitzgibbon (Board Review 04) stated that he did not know why the tow truck was called for the vehicle, and that he asked PO Benlhousain at the time the PO Fitzgibbon was notified that he had to appear at the CCRB. PO Benlhousain informed PO Fitzgibbon that he had the vehicle towed for paperwork, but did not explain further, and PO Benlhousain did not know why he stated this.

Patrol Guide Procedure 218-19 (Board Review 11) states that officers are allowed to seize vehicles pursuant to arrest, for further investigation, if the property is abandoned or the owner is not known, or if the property is up for forfeiture (e.g. controlled substance arrests and gambling arrests).

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

Squad: 12

Squad Leader: _____ IM Lily Carayannis _____
Signature Title/Print Date